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No. 85-802

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

October Term, 1985

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY, LTD.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIIONAL MARINE UNDERWRITERS LTD., and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

REAL PARTY'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The petition requests this Court to consider the following questions:

(1) Whether the Superior Court for the State of California properly determined that a foreign corporation that placed a layer of insurance covering a fleet of fishing vessels whose home port was San Diego, California, could have reasonably expected to cause an effect in California such as to permit the exercise of in personam jurisdiction by a California Court.

(2) Whether the Superior Court for the State of California properly determined that it could exercise in personam jurisdiction over a foreign corporation which purchased an undisclosed percentage of the assets of the aforementioned corporation.

TOPICAL INDEX

	Page
QUESTIONS PRESENTED	i
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS WHY THE WRIT SHOULD BE DENIED	4
1. Neither the decision below nor the established facts raise the initial question presented in the Petition	4
2. The Superior Court properly concluded, based on substantial evidence, that petitioner John Holman & Sons knowingly placed insurance covering California fishing vessels; that such an act could reasonably have been expected to have an effect in California; and that the exercise of in personam jurisdiction was proper	5
(a) The facts of this case fall squarely within the accepted boundaries of in personam jurisdiction	5
3. Petitioner improperly seeks an advisory opinion on the continuing validity of the California Supreme Court's decision in *McCorkle v. City of Los Angeles*. Further, California's appellate procedure is constitutionally sound, and does not require review by this Court	9
CONCLUSION	10

TOPICAL INDEX (Continued)

	Page
APPENDICES	11
Declaration of H. Robert Larkin in Support of Opposition to Cross-Defendants' Motion to Quash Service of Summons	B-1
Declaration of Joseph Madruga in Support of Motion for Reconsideration	B-7
Petition for Review to the Supreme Court of the State of California	B-15
Declaration of James Gorman in Support of Ex Parte Application for Order for Continuance of Hearing	B-17

TABLE OF AUTHORITIES

Page

CASES

Buckeye Boiler Corp. v. Superior Court,
71 Cal.2d 893 (1969) 6

Burger King Corp. v. Rudzewicz,
__ U.S. __, 105 S.Ct. 2174 (1985) 5,6,7

Burmingham Fire Ins. Co. v. KOA Fire & Marine
Ins. Co., 572 F.Supp. 962 (S.D.N.Y. 1983) 6

Calder v. Jones,
__ U.S. __, 104 S.Ct. 1482 (1984) 2

Data Disc, Inc. v. Systems Technology Asso., Inc.,
557 F.2d 1280 (9th cir. 1979)..... 7

Hammon v. Southwestern Gas Pipeline,
721 F.2d 140 (5th Cir. 1983) 2

Hanson v. Denckla,
357 U.S. 235 (1958) 6

Helicopteros Nacionales de Columbia, S.A. v. Hall,
466 U.S. __, 104 S.Ct. 1868 (1984)..... 5

Insurance Corp. of Ireland, Ltd. v. Compagnie des
Bauxites de Guinee, 456 U.S. 694 (1982)..... 7

International Shoe Co. v. Washington,
326 U.S. 310 (1945) 6

Keeton v. Hustler Magazine, Inc.,
465 U.S. __, 104 S.Ct. 1473 (1984)..... 5

TABLE OF AUTHORITIES (Continued)

Page

CASES (Continued)

Kulko v. Superior Court,
436 U.S. 84 (1978) 2

McCorkle v. City of Los Angeles,
70 Cal.2d 252 (1969) 9

McGee v. International Life Insurance Co.,
355 U.S. 220 (1957) 6

Quattrone v. Superior Court,
44 Cal.App.3d 296 (1975) 8

Secrest Machine Corp. v. Superior Court,
33 Cal.3d 664 (1983) 6

Skaff v. Small Claims Court,
68 Cal.2d 76 (1968) 9

Trede v. Superior Court,
21 Cal.2d 630 (1943) 9

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 6

Younger v. Superior Court of Sacramento County,
21 Cal.3d 102 (1978) 9

STATUTES

28 U.S.C. Section 1257(3) 2

California Code of Civil Procedure Section 418.10 9

No. 85-802

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JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY, LTD.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIIONAL MARINE UNDERWRITERS LTD., and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

REAL PARTY'S BRIEF IN OPPOSITION

Real Party in Interest, Lawton-Byrne-Bruner, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the order and opinion of the Superior Court of the State of California denying petitioners' motions to quash service of summons for lack of personal jurisdiction.

JURISDICTION

This Court has jurisdiction, under 28 U.S.C. Section 1257, subdivision (3), to consider the first two questions raised in the Petition for Writ of Certiorari. See *Calder v. Jones*, __ U.S. __, 104 S.Ct. 1482, 1486 n. 8 (1984); *Kulko v. Superior Court*, 436 U.S. 84 (1978). However, there has been no final judgment concerning the third question presented by the petition, and therefore jurisdiction is lacking. 28 U.S.C. Section 1257(3). Although this issue was presented to the California Supreme Court, it was merely a request, as herein, for an advisory opinion, because petitioner has *not* made a general appearance in this case. Thus, both statutory and constitutional jurisdiction are lacking as to this question. See generally, *Hammon v. Southwestern Gas Pipeline*, 721 F.2d 140, 143-44 (5th Cir. 1983).

STATEMENT OF THE CASE

Real Party in Interest, while accepting petitioners' Statement of the Case, respectfully sets forth the following inaccuracies:

1. Petitioner states that "Supporting declarations established without contradiction that John Holman & Sons . . . did not know that any of the insured vessels were owned by a California corporation or had a California home port or even sailed in California waters, and did not intend to cause any effect in California. (App. A18-A32)." *Petition* at 6.

However, the declaration of H. Robert Larkin was also before the Superior Court (as well as the California Court of Appeal and Supreme Court). In his declaration, Mr. Larkin stated, in part:

> The 'Ralston Purina Account' is a large, much sought after account by all insurance brokers and intermediaries. The cover notes and policies of insurance issued by the various brokers and insuring entities referred to the 'assured' as 'Ralston Purina Incorporated', but all insured vessels were then specifically listed on an 'underlying schedule'. . . . It is inconceivable that an experienced London insurance broker such as John Holman would not have known that the insured vessels were California tuna fishing vessels. The fleet premiums exceed $2,000,000.

App. B-4.[1]

Thus, supporting declarations *did* establish a question of fact concerning these critical issues. Indeed, the holding of the Superior Court lends itself to but one conclusion -- that this question of fact was resolved against petitioners. See App. A-10 ("Holman need not have intended to cause an effect in California by its placement of a layer of insurance on a California vessel. However, such act could reasonably have been expected by Holman to have an effect in California"). See also, Declaration of Joseph Madruga, App. B-7 — B-9 (California nexus).

2. To the extent that petitioners' statement regarding the Superior Court's collective reference to John Holman & Sons and Horace, Holman as "Holman", *Petition* at 7, tends to imply that they were considered as a single entity, the Superior Court's

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[1] To insure clarity, references to appendices supplemented by Real Party in Interest Lawton-Byrne-Bruner will be cited as App. B, while references to material provided by petitioner will be referred to as enumerated in the petition.

opinion itself indicates that the two entities were indeed regarded as separate. See App. A-7.

REASONS WHY THE WRIT SHOULD BE DENIED

1. *Neither the decision below nor the established facts raise the intitial question presented in the Petition.*

The first question presented in the petition is based on an unwarranted factual predicate -- *i.e.*, that John Holman & Sons "had no contact with California. . . ." Not only does this statement beg the question, it is inconsistent with the decision of the Superior Court. See *supra* at p. 3. Further, this issue was not squarely presented to the California Supreme Court. In Holman's state court petition, this question was framed as:

> Whether the Due Process Clause of the Fourteenth Amendment permits this state to exercise personal jurisdiction (a) over a foreign corporation *based solely upon a single foreseeable but unintended 'effect' in this state caused by a commercial transaction. . . .*

Petition for Review, Issues Presented for Review, at 1 [emphasis added] (App. B-15 — B-16).

Thus, the question, as framed below, focused on the issue of intent and seemingly conceded a foreseeable effect in California. The question focused on whether John Holman & Son's lack of intent to cause an effect in California deprived California of in personam jurisdiction. However, the facts and procedural history of this case simply do not permit the formulation of the first question presented by the petitioner. On its facts, this is a "foreseeable effects" case -- not a "no contacts" case.

2. *The Superior Court properly concluded, based on substantial evidence, that petitioner John Holman & Sons knowingly placed insurance covering California fishing vessels; that such an act could reasonably have been expected to have an effect in California; and that the exercise of in personam jurisdiction was proper.*

The clear determination underlying the Superior Court's holding, App. A-10, is that John Holman & Sons knew, at the time insurance was placed, that the insured vessels were San Diego tuna boats. This finding is supported by evidence that was properly before that court -- the declaration of H. Robert Larkin. (App. B-1 — B-6.) Indeed, the notion that a fleet of tuna boats could possibly be home-ported in St. Louis, Missouri, is quite remarkable. Thus, the determination that the placement of insurance "could reasonably have been expected by Holman to have an effect in California" was within the discretion of the Superior Court.

(a) *The facts of this case fall squarely within the accepted boundaries of in personam jurisdiction.*

This court has long recognized that a state may properly exercise in personam jurisdiction over a non-resident corporation that has purposefully directed its activities at residents of the forum, see *Burger King Corp. v. Rudzewicz*, __ U.S. __, 105 S.Ct. 2174, 2182 (1985); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. __, __, 104 S.Ct. 1473, 1478 (1984), when "the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King v. Rudzewicz, supra*, 105 S.Ct. at 2182; *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. __, __, 104 S.Ct. 1868, 1872 (1984).

This "purposeful availment" of the privilege of conducting activities in the forum state satisfies the "traditional notions of fair play and substantial justice" which underly the minimum contacts

benchmark for the exercise of in personam jurisdiction. See *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Such "purposeful availment" supports the exercise of jurisdiction even though it consists of a single act, *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957) (single act creating a "substantial connection" with forum), and physical contacts are entirely lacking. See *Burger King v. Rudzewicz, supra*, 105 S.Ct. at 2184; see also, *McGee v. International Life Insurance Co., supra*, 355 U.S. at 222-23.

The facts of this case fall squarely within the defined boundaries of in personam jurisdiction. This is not a case, such as *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), in which an out-of-state corporation's only tie to the forum resulted from a customer's unilateral decision to move its product there. Nor has John Holman & Sons been haled into a California court as a result of "random" "fortuitous", or "attenuated" contacts. See *World-Wide Volkswagen v. Woodson, supra*, 444 U.S. 299. Rather, John Holman & Son engaged in purposeful economic activity involving California tuna vessels from which it derived substantial interest in providing a forum for the litigation which arises from such contacts. See *McGee, supra*, 355 U.S. at 223; *Secrest Machine Corp. v. Superior Court*, 33 Cal.3d 664, 669 (1983); *Buckeye Boiler Corp. v. Superior Court*, 71 Cal.2d 893, 902 (1969).

The cases cited by petitioner do not rebut this conclusion. Although petitioner relies strongly on the district court's opinion in *Burmingham Fire Ins. Co. v. KOA Fire & Marine Ins. Co.*, 572 F.Supp. 962 (S.D.N.Y. 1983), this reliance is misplaced. The quoted portion of this opinion is dicta, because unlike the present case, the third party plaintiff in *Burmingham Fire Ins. v. KOA* failed to introduce *any* evidence in opposition to the third party defendant's motion to dismiss. See *Id.* at 965. ("KOA has utterly failed, however, to provide any evidentiary support to buttress [its] assertions"); see also *Id.* at 966 ("KOA has failed to furnish

any evidence to support its own allegations or to controvert [third party defendant's]. It has not presented any evidence showing what New York risks, if any, were involved here. . . .''). Here, competent evidence has been introduced which establishes Holman's contacts with California and contradicts assertions raised in petitioners' declarations.

Similarly, the argument that petitioners' status as a foreign corporation precludes the exercise of in personam jurisdiction in this case is unfounded. This is because restrictions on state sovereign power under the minimum contacts doctrine are grounded in the ''individual liberty interest preserved by the due process clause rather than as a 'function of federalism concerns'''. *Burger King v. Rudzewicz*, __ U.S. __, __, 105 S.Ct. 2174, 2182, n. 13. See also *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03, n. 10 (1982). Although the foreign status of the corporate defendant may be relevant, among other factors, to a determination of the reasonability of the exercise of state court jurisdiction, the due process clause has never been construed to affirmatively bar state courts from exerting jurisdiction over foreign corporations with significant forum contacts. As this Court recently stated, ''Where a defendant who purposefully directed his activities at forum residents seeks to defeat jurisdiction, it must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'' *Burger King v. Rudzewicz, supra*, 105 S.Ct. at 2185. Under the facts of this case, petitioners' foreign status presents much less than a compelling case, especially considering California's interests in providing a forum for this litigation. See, *Data Disc, Inc. v. Systems Technology Asso., Inc.*, 557 F.2d 1280, 1289 (9th Cir. 19__).

This analysis also holds true with regard to Horace, Holman Ltd. Through its purchase of an undisclosed percentage of the assets of John Holman & Sons, Horace, Holman & Co. became

the direct beneficiary of John Holman & Son's forum-related activities.[2]

Thus, given the vaguely contradicted allegation that Horace, Holman was a successor in interest to John Holman & Sons, the Superior Court acted within the bounds of its discretion in treating Horace, Holman as such.

California's special regulatory interest in insurance, and the California nexus of this litigation supports the exercise of California jurisdiction in this case. See, *e.g.*, *Quattrone v. Superior Court*, 44 Cal.App.3d 296, 306-08 (1975) (State interest in subject regulatory concern). When an entity such as John Holman & Sons places a major layer of insurance for a San Diego based fleet of tuna boats, it is reasonably foreseeable that, should problems develop, the negligent broker would be haled into a San Diego court. This case involves a result which is entirely foreseeable from the negligent placement of insurance -- a gap in coverage caused by an insolvent foreign insurer. Its effects were held most strongly in San Diego, which is also entirely foreseeable, because the insurance was intended to cover San Diego fishing boats. The effects are precisely of the type which one would reasonably expect, and they arose precisely where one would reasonably expect to find them. Under these circumstances, California's assertion of in personam jurisdiction is both reasonable and constitutionally proper.

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[2] Because real parties' discovery efforts have been thwarted, see App. B-17 — B-21, facts concerning the extent of the purchase are limited. In the affidavit filed by Horace, Holman, its managing director simply stated, among other things, that, "To the best of [his] knowledge, John Holman & Sons is still in existence," and proferred the legal conclusion that Horace, Holman was not the successor in interest of John Holman & Sons, but rather the purchaser of "the goodwill aspect" of its London broker's business. (App. A-16.)

3. *Petitioner improperly seeks an advisory opinion on the continuing validity of the California Supreme Court's decision in McCorkle v. City of Los Angeles.*[3] *Further, California's appellate procedure is constitutionally sound, and does not require review by this Court.*

While California courts avoid the issuance of advisory opinions as a matter of discretion, see *Younger v. Superior Court of Sacramento County*, 21 Cal.3d 102, 119-20 (1978), this Court must avoid such decisions because subject matter jurisdiction is lacking. See *supra* at p. 7. Petitioner essentially claims that the interlocutory review procedure provided by California Code of Civil Procedure Section 418.10 is inadequate because of the *McCorkle* doctrine, ignoring the common law concept that a general appearance represents a party's consent to personal jurisdiction. The requirement that petitioners elect between denying or consenting to jurisdiction simply does not deprive them of either life, liberty, or property.

Further, because California's treatment of a general appearance as a consent to personal jurisdiction is steeped in common law tradition, the appellate review provided by Section 418.10 is not a "capricious or arbitrary" denial of review. Rather, this procedure is sound, representing the clear intent of the California legislature. Indeed, it is well-settled law that there is no constitutional right to an appeal; "the appellate procedure is entirely statutory and subject to complete legislative control." *Trede v. Superior Court*, 21 Cal.2d 630 (1943); see also *Skaff v. Small Claims Court*, 68 Cal.2d 76 (1968).

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[3] 70 Cal.2d 252 (1969).

CONCLUSION

For the foregoing reasons, real party in interest respectfully submits that the Petition for Writ of Certiorari should be denied.

Dated: December 10, 1985

Respectfully submitted,

AULT, MIDLAM & DEUPREY

By: _____
KEVIN W. MIDLAM

Attorneys for Real Party in Interest,
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APPENDICES

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DONALD J. CORREIA and CHERYL MARIE CORREIA, Plaintiffs, v. CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al., Defendants. AND ALL RELATED CROSS-ACTIONS.	Case No. 526828 DECLARATION OF H. ROBERT LARKIN IN SUPPORT OF OPPOSITION TO CROSS-DEFENDANTS' MOTION TO QUASH SERVICE OF SUMMONS Date: March 7, 1985 Time: 9:00 a.m. Dept: 35

I, H. Robert Larkin, do hereby declare a follows:

I am an officer and director of LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY, a Missouri Corporation,

which is a defendant and a cross-complainant in the above-entitled litigation.

For a number of years, LAWTON-BRYNE-BRUNER had assisted a number of tuna fishing vessel owners in obtaining insurance for their vessels, to include protection and indemnity insurance. This group of owners was known collectively as the "Ralston Purina account". The M/V Conquest was one of the vessels covered by the insurance which LAWTON-BRYNE-BRUNER had procured.

Effective December 1, 1980, as had been its custom, LAWTON-BRYNE-BRUNER again procured insurance for the Ralston Purina fleet, to include the M/V Conquest. This insurance again included protection and indemnity insurance, which is designed to protect the owner of the vessel in the event that one of the vessel's crew members becomes injured and brings suit. The purpose of the insurance is, of course, to insure that the injured seaman has insurance protection so that he might be conpensated [*sic*] for his injuries.

In the policy of insurance which became effective on December 1, 1980, LAWTON-BRYNE-BRUNER placed 30% of the first $500,000 in protection and indemnity insurance directly with an entity known as Marine Office of America Corporation. The underwriter on this policy of insurance was CONTINENTAL INSURANCE COMPANY.

The remaining 70% of the first $500,000 together with all excess layers of insurance, was placed by LAWTON-BRYNE-BRUNER through a Canadian insuring intermediary known as CANADIAN INTERNATIONAL MARINE UNDERWRITERS (CIMU).

LAWTON-BRYNE-BRUNER was advised subsequently by CIMU that insurance had been placed as follows:

a) 70% of the first $100,000 was placed with an italian insurer known as SIAT.

b) 70% of the next layer of insurance ($200,000 excessive of $100,000) was placed by CIMU with an entity known as AMERICAN CENTENNIAL INSURANCE COMPANY.

CIMU then advised LAWTON-BRYNE-BRUNER that it (CIMU) had to go to the London marine market to place all remaining insurance and that it did so by going to the entity known as JOHN HOLMAN & COMPANY. CIMU reported that JOHN HOLMAN placed all remaining insurance as follows:

a) 70% of the third layer of insurance ($200,000 excess of $300,000) through JOHN HOLMAN with a "London underwriter". LAWTON-BRYNE-BRUNER was subsequently advised that the insuring entity was "BEDFORD INSURANCE COMPANY LIMITED". A true and correct copy of the JOHN HOLMAN cover note attesting to this insurance is attached to this declaration as Exhibit "A".

b) The first excess layer of insurance ($500,000 excess of $500,000) was also placed through JOHN HOLMAN, again reportedly through a "London underwriter". LAWTON-BRYNE-BRUNER was ultimately advised that the name of this insuring entity was REINSURANCES LIMITED. A copy of the cover note which we ultimately received attesting to this placement is attached to this declaration as Exhibit "B". (LAWTON-BRYNE-BRUNER ultimately learned that this layer of insurance had been in turn reinsured through DUNCANSON & HOLT, a New York corporation with offices in California.)

c) The second and third excess layers ($500,000 excess of $1,000,000 and 3.5 million dollars excess of 1.5 million dollars) were placed with LLOYD'S syndicates.

The "Ralston Purina account" is a large, much sought after account by all insurance brokers and intermediaries. The cover notes and policies of insurance issued by the various brokers and insuring entities referred to the "assured" as "Ralston Purina Incorporated", but all insured vessels were then specifically listed on an "underlying schedule". (In this case, there were thirty-four vessels on the schedule). It is inconceivable that an experienced London insurance broker such as JOHN HOLMAN would not have known that the insured vessels were California tuna fishing vessels. The fleet premiums exceed $2,000,000.

It should be noted that LAWTON-BRYNE-BRUNER and the insureds were originally notified, and the JOHN HOLMAN cover note confirms, that the layer of insurance of $200,000 excess of $300,000 had been placed with a "London underwriter". There is in fact a Bedford General Insurance Company, Limited, which is a licensed London insurer. (It is a subsidiary of the Zurick insurance company). At no time did JOHN HOLMAN advise LAWTON-BRYNE-BRUNER or anyone else that the actual insuring entity on this layer of insurance was the BEDFORD INSURANCE COMPANY LIMITED (Hong Kong).

LAWTON-BRYNE-BRUNER has subsequently learned that JOHN HOLMAN actually placed this layer of insurance with the BEDFORD through the BEDFORD'S London managing agent, GERALD HERBERT LIMITED. It is inconceivable that JOHN HOLMAN & COMPANY was not aware that GERALD HERBERT of GERALD HERBERT LIMITED was in fact one of five directors of the BEDFORD INSURANCE COMPANY LIMITED.

LAWTON-BRYNE-BRUNER has also subsequently learned that JOHN HOLMAN & COMPANY participated in the placement of reinsurance for the first excess layer of insurance ($500,000 excess of $500,000). This layer of insurance, which had been placed with REINSURANCES LIMITED, a Cayman Island insurer, which was also not licensed in London, was reinsured

through DUNCANSON & HOLT'S San Francisco office. True and correct copies of telexes which were subsequently provided to us by CIMU, attesting to communications to CIMU from JOHN HOLMAN & COMPANY, are attached hereto as Exhibits C-1 and C-2.

In May, 1981, LAWTON-BRYNE-BRUNER learned of the incident involving the injury to DONALD CORREIA while on board the M/V Conquest, one of the insured vessels. LAWTON-BRYNE-BRUNER immediately placed MOAC and CIMU on notice. Thereafter, processing of the claim brought by the CORREIAS passed to CIMU as intermediary for the lead insurer with respect to the claim.

In September, 1983, counsel for the plaintiffs made a demand at a settlement conference in excess of $500,000. Out of an abundance of caution, LAWTON-BYRNE-BRUNER suggested that CIMU place all excess layers on notice. CIMU acknowledged that it had done so. It is my opinion, based upon my decades of training and experience in the insurance industry, that, had the CORREIA claim been properly processed in the first instance, the insuring intermediaries would have placed the appropriate insuring entities on notice of the claim and reserves would have been set aside appropriately. This obviously never occurred.

In late November, 1983, LAWTON-BRYNE-BRUNER was advised, for the first time, that the layer of insurance of 70% of $200,000 excess of $300,000 had not been placed with a "London underwriter" but, rather, had been placed with a Hong Kong insurer. LAWTON-BRYNE-BRUNER was advised that the Hong Kong insurer had just been dealt a legal set back in the British courts when its own reinsurance contracts with a Brazilian insurer were found to hav been illegal (since the BEDFORD was not a licensed insurer in London) and that the contracts were thus voided by the English courts.

LAWTON-BRYNE-BRUNER then retained counsel in London to advise it of this situation. Among other things, LAWTON-BRYNE-BRUNER directed its counsel, the firm of solicitors of Hill, Dickinson & Company, to contact London counsel for CIMU and JOHN HOLMAN. Our counsel advised LAWTON-BRYNE-BRUNER in a telex dated February 3, 1984, that HOLMAN'S counsel had advised that HOLMAN had no communications from the BEDFORD INSURANCE COMPANY. (A true and correct copy of an excerpt of a telex sent by HOLMAN'S counsel to LAWTON-BRYNE-BRUNER'S counsel is attached as Exhibit "D").

On February 29, 1984, LAWTON-BRYNE-BRUNER'S counsel advised that HOLMAN'S counsel advised that the BEDFORD was simply denying any knowledge of the CORREIA claim. A true and correct copy of a telex sent by HOLMAN'S counsel to LAWTON-BRYNE-BRUNER'S counsel is attached hereto as Exhibit "E".

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of March, 1985, at San Diego, California.

H. ROBERT LARKIN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DONALD J. CORREIA and CHERYL MARIE CORREIA, Plaintiffs, v. CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al., Defendants. AND ALL RELATED CROSS-ACTIONS.	Case No. 526828 DECLARATION OF JOSEPH MADRUGA IN SUPPORT OF MOTION FOR RECONSIDERATION Date: April 19, 1985 Time: 9:00 a.m. Dept: 35

I, Joseph Madruga, declare as follows:

I am a resident of the County of San Diego, State of California. I am a citizen of the State of California.

In April, 1981, I was an officer and a director in the Conquest Fishing Corporation, a California corporation. Conquest Fishing Corporation was the owner of the tuna fishing vessel known as the M/V Conquest. The Conquest was the vessel on which DONALD J. CORREIA was working when he was injured in April, 1981.

At that time, the M/V Conquest used San Diego as a home port.

For a number of years, the Conquest Fishing Corporation had obtained protection and indemnity insurance for the M/V Conquest. We obtained this insurance through our managing corporation, known as the Sea M. Corporation, which was also a California corporation. As a principal in the vessel's owner, I generally negotiated for the insurance to be provided for the M/V Conquest by dealing with personnel from LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY, either in St. Louis or here in California.

The policy of insurance on the Conquest which was in force at the time of DONALD J. CORREIA'S accident had been obtained by contact with LAWTON-BRYNE-BRUNER personnel. At the time, I was in California. The bill for the premiums was sent by LAWTON-BRYNE-BRUNER in St. Louis to Sea M. Corporation in California. Attached hereto as Exhibit "A" is a true and correct copy of a letter which I received dated January 26, 1981, in which the invoice for the premiums on the subject vessel was forwarded from LAWTON-BRYNE-BRUNER to Sea M. Corporation.

The premiums for this insurance were in turn mailed by Sea M. Corporation, in California, to LAWTON-BRYNE-BRUNER in St. Louis. The semi-annual premiums for *only* protection and indemnity insurance for *only* the Conquest for $34,341. Attached hereto as Exhibit "B" is a true and correct copy of the invoice sent by LAWTON-BRYNE-BRUNER for this insurance.

Ultimately, a copy of the policy of insurance was sent to Sea M. Corporation in California. A copy of that policy was sent to me in California. A true and correct copy of the cover letter forwarding that policy to me is attached hereto as Exhibit "C".

A true and correct copy of the policy sent to me is attached to the complaint filed by DONALD J. CORREIA. Among other things, in that policy, was a document entitled the "New York Suable Clause". A true and correct copy of that document from that policy is attached hereto as Exhibit "D".

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 20 of March, 1985, at San Diego, California.

Joseph Madruga

JOSEPH MADRUGA

January 26, 1981

Mr. Hal Scott
Sea M Corporation
2040 Harbor Island Drive
Suite 101
San Diego, California 92101

Re: CONQUEST, FRONTIER, MONTANA,
SARATOGA - P&I Renewal

Dear Hal:

Enclosed you will find the semi-annual P&I invoices due on the above referenced vessels. These represent the Primary and Excess layers as stated on the invoice.

I would appreciate your reviewing the total amount of P&I to ensure that the total limit insured to date is adequate for your needs.

If you should have any questions or comments, feel free to contact me.

Best regards.

Very truly yours,

Robert G. Lawrence
Vice President

RGL/dlb
Enc.
cc: Joseph Madruga

EXHIBIT "A" TO MADRUGA DECLARATION

Lawton-Byrne-Bruner
Insurance Since 1889
Ten Broadway, Saint Louis, Missouri 63102
314-621-5540

REFERENCE NO. 318924-1

Vessel "CONQUEST"

CONTACT NAME	ACCOUNT NO.	DATE
318	8558	12/1/80

ALL PREMIUMS ARE DUE AND PAYABLE ON EFFECTIVE DATE OF COVERAGE.

IF FINANCING IS DESIRED PLEASE CONTACT OUR OFFICE IMMEDIATELY.

EFFECTIVE DATE	EXPIRATION DATE	POLICY NUMBER	COMPANY	DESCRIPTION	PREMIUM
12/1/80	12/1/81	LR12180	Continental/ CIMU	$500,000 Primary P&I	$27,336.50
"	"	LR121801/ 802	CIMU	$3,500,000 Excess P & I	7,004.50
				TOTAL SEMI - ANNUAL PREMIUM DUE 12/1/80 - 6/1/81	$34,341.00

TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THE YELLOW REMITTANCE COPY WITH YOUR CHECK IN THE ENCLOSED ENVELOPE. $34,341.00

EXHIBIT "B" TO MADRUGA DECLARATION

Lawton-Byrne-Bruner
Insurance Since 1889

April 16, 1981

Mr. Hal Scott
Sea M Corporation
2040 Harbor Island Drive
Suite 101
San Diego, California 92101

Re: Protection & Indemnity
Renewal Policies

Dear Hal:

Enclosed you will find a copy of all the P&I policies, both Primary and Excess for the period December 1, 1980 to December 1, 1981.

Please review and advise if you have any questions or comments.

Best regards.

Very truly yours,

/s/
Robert G. Lawrence
Vice President

RGL/dlb
Enc.
cc: Joseph Madruga

EXHIBIT "C" TO MADRUGA DECLARATION

NEW YORK SUABLE CLAUSE

The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless, as between the Assured and the Assurers the place of suit hereon shall be deemed the State of New York, United States of America, and any suit hereon may be brought against the Underwriters in any Court of competent jurisdiction within the United States of America. The summons and other legal processes may be served on Underwriters by and on behalf of the Assured by mailing a copy thereof by United States Registered mail addressed to Louis Orgelfinger, Daniel E. Costi or Martin J. Dever the law firm of Messrs. Mendes & Mount, 3 Park Avenue, New York, New York 10016, each of whom Underwriters hereby authorize to accept by and on their behalf such summons and other legal processes against Underwriters in any Court of competent jurisdiction within the United States of America. The mailing as herein provided, of such summons or other legal process shall be deemed personal service and accepted by Underwriters as such, and shall be legal and binding upon Underwriters for all the purpose of the suit. Final judgment against Underwriters in any such suit shall be conclusive; and it may be enforced in other jurisdictions including Great Britian, [*sic*] by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purposes of suit as herein provided, the word "Assured" includes any Mortgagee under ship mortgage and any person succeeding to the rights of any such Mortgagee.

If this insurance is affected by the New York State Insurance Law;

> Underwriters hereon hereby designate the Superintendent of Insurance of the State of New York or his successor in office their true and lawful attorney upon whom may be served any lawful

process in any action, suit, or proceeding institute by or on behalf of the (re)insured, or any beneficiary hereunder arising out of this contract of (re)insurance.

To be attached to and forming part of Policy No. L.R. 12180.

MAR/POL/3

4th Civil No. D003476

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY LTD.,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIONAL MARINE UNDERWRITERS LTD. and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

PETITION FOR REVIEW

ISSUES PRESENTED FOR REVIEW

This case presents the following important issues for review:

1. Whether the Due Process Clause of the Fourteenth Amendment permits this state to exercise personal jurisdiction (a) over a foreign corporation based solely upon a single foreseeable but

unintended "effect" in this state caused by a commercial transaction in connection with which the foreign resident, acting at the request of another foreign citizen performed services entirely within its own country; or, (b) over a foreign corporation which, subsequent to the above-referenced transactin, merely purchased a portion of the assets of the first corporation?

2. Whether the Due Process and Equal Protection Clauses of the Fourteenth Amendment require this state to grant plenary non-discretionary review of a trial court's denial of a motion to quash service of process when such motion is predicated on federal constitutional grounds?

LAW OFFICES
AULT, MIDLAM and DEUPREY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
5030 Camino de la Siesta, Suite 201
San Diego, California 92108
(619) 295-1202

MAY -1 1985
By M. MASES DEPUTY

Attorneys for LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DONALD J. CORREIA, et al., Plaintiffs, v. CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al., Defendants. AND ALL RELATED CROSS-ACTIONS.	Case No. 526828 DECLARATION OF JAMES GORMAN IN SUPPORT OF EX PARTE APPLICATION FOR ORDER FOR CONTINUANCE OF HEARING Date: March 7, 1985 Time: 9:00 a.m. Dept: 35

I, James Gorman, declare as follows:

I am an attorney at law duly licensed to practice law in the State of California. I am a member of the law firm of Ault, Midlam & Deuprey, attorneys of record for defendant and cross-complainant LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY.

This declaration is in support of an ex parte application for a continuance of a hearing which is currently set for March 7, 1985, at 9:00 a.m. in Department 35. Said motion has been brought by defendants and cross-defendants JOHN HOLMAN & SONS, LIMITED and HORACE, HOLMAN & CO. LIMITED. The motion is to quash service of the summons for lack of jurisdiction, or in the alternative, to dismiss for inconvenient forum.

The chronology of events relevant to this motion could be set forth as follows:

a) On November 16, 1984, I caused the summons and cross-complaint with respect to this matter to be sent to JOHN HOLMAN & SONS LIMITED and HORACE, HOLMAN & COMPANY LIMITED in first class mail, postage prepaid, requiring a return receipt. Pursuant to California Code of Civil Procedure Section 415.45, service of the summons was deemed effective ten days after that mailing.

b) On November 29, 1984, I had a lengthy telephone conversation with attorney Marshall Morgan, a member of the law firm representing the cross-defendants in this action. Mr. Morgan indicated in that telephone call that his law firm would be appearing on behalf of JOHN HOLMAN & SONS LIMITED and HORACE, HOLMAN & COMPANY LIMITED.

c) On November 30, 1984, I mailed various materials to Mr. Morgan pertaining to this matter.

d) On December 4, 1984, I had another lengthy telephone call with Mr. Morgan concerning this case.

e) On December 20, 1984, at a meeting in the offices of Morgan, Wenzel & McNicholas, Mr. Morgan indicated for the first time to me that his client might want to challenge jurisdiction. Mr. Morgan indicated, however, that his client

needed additional time to evaluate the facts and circumstances of this case. I therefore gave Mr. Morgan through and including January 31, 1985, to file papers challenging jurisdiction, if that was his clients' choice. If his clients chose to make an appearance in this matter without challenging jurisdiction, Mr. Morgan was given through and including February 28, 1985 to respond.

f) On January 30, 1985, I learned for the first time that cross-defendants were going to challenge jurisdiction. On January 31, 1985, pursuant to an ex parte application filed by counsel for the cross-defendants, a hearing date of March 7, 1985, was set in this matter.

g) I received a copy of the moving papers with respect to this matter on February 5, 1985.

Upon receipt and review of the moving papers filed by the cross-complainants, I prepared a request for inspection and reproduction of records from JOHN HOLMAN & SONS LIMITED. Said request was forwarded in the mail to the law firm of Morgan, Wenzel & McNicholas on February 7, 1985. On that same date, I called attorney Marshall Morgan advising him of this action on my part and indicating that I would need to obtain the results of that discovery before the hearing on the motion to quash service. I suggested to Mr. Morgan that we stipulate to continue the hearing on the motion to quash. Mr. Morgan referred me to attorney Nelson. On the following day, I spoke with attorney Nelson, who indicated that she would not be able to stipulate to a continuance of the hearing.

On February 27, 1985, I received written objections to our request to produce documents from attorney Nelson. Counsel objected to our request to produce documents on various grounds, to include but not to be limited to the purported requirements of the Hague Convention, alleged improper service, overbreadth, and alleged unspecified impropriety.

I am now requesting a continuance of the hearing currently set for March 7, 1985, for a period of at least 90 days in order to conduct discovery on issues relevant to the subject matter of the motion to quash jurisdiction. It is well established in the area of motions to quash service of summons for lack of personal jurisdiction that a plaintiff is entitled to conduct discovery on jurisdictional issues. *Omega Video v. Superior Court*, 146 Cal.App.3d 470, 481, 194 Cal.Rptr. 574 (1983).

At this time, it is our intention to pursue the request to produce documents previously forwarded to counsel for JOHN HOLMAN & SONS LIMITED. Furthermore, it is our intention to propound appropriate depositions, to include the depositions of those declarants who have filed declarations on behalf of JOHN HOLMAN & SON LIMITED and HORACE HOLMAN & COMPANY LIMITED in this matter.

On February 27, 1985, the following persons were notified by myself or by my secretary, Carla Jacobs, that the instant ex parte application for a continuance of the hearing would be made and that said application would be made on Thursday, February 28, 1985, at 3:30 p.m. in Department 35. The persons contacted and the time of said contact on February 27 were as follows:

a) Gretchen Nelson was advised in person at 12:55 p.m.

b) The secretary for Andre Jardini, counsel of record for Canadian International Marine Underwriters Limited, was contacted at 2:20 p.m.

c) The secretary for John Rhoades, counsel of record for defendant SIAT, was contacted at 2:21 p.m.

d) The secretary for attorney Bonnie Bass, counsel of record for American Continental Insurance Company, was contacted at 2:37 p.m.

e) The secretary for attorney Janet Grove, counsel of record for Duncanson & Holt, was contacted at 2:25 p.m.

f) The secretary for Daniel MacLeod, counsel of record for Lloyd's, was contacted at 2:26 p.m.

g) The secretary for John Reed, attorney for the plaintiffs, was so contacted at 2:25 p.m.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of February, 1985 at San Diego, California.

James Gorman

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013a and 2015.5)

Attorney:
AULT, MIDLAM & DEUPREY
KEVIN MIDLAM
JAMES GORMAN
5030 Camino de la Siesta,
Suite 201
San Diego, CA 92108
(619) 295-1202

(Attorneys for Real Party in Interest, Lawton-Byrne-Bruner Insurance Agency Company)

October Term, 1985
No. 85-802

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY, LTD.,
Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,
Respondent,

I, the undersigned, say: I am a citizen of the United States, over 18 years of age, employed in the County of San Diego, California, in which county the within-mentioned mailing occurred, and not a party to the subject cause; that I am employed at 5030 Camino de la Siesta, Suite 201, San Diego, County of San Diego, State of California.

I served the within REAL PARTY'S BRIEF IN OPPOSITION: an original and 39 copies on the United States Supreme Court as follows:

Alexander L. Stevens
Clerk, U.S. Supreme Court
Washington, D.C. 20543

of which 3 true and correct copies of the document filed in the cause is affixed, by placing 3 copies thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

MORGAN, WENZEL & McNICHOLAS
W. MARSHALL MORGAN
WALTER M. YOKA
GRETCHEN M. NELSON
1545 Wilshire Blvd., Suite 800
Los Angeles, CA 90017

GREINES, MARTIN, STEIN & RICHLAND
ALAN G. MARTIN
9601 Wilshire Blvd., Suite 508
Beverly Hills, CA 90210

KNAPP, PETERSON & CLARKE
ANDRE E. JARDINI
70 Universal City Plaza, Ste. 400
Universal City, CA 91608

Solicitor General
Department of Justice
Washington, D.C. 20530

Clerk of the Court
California Supreme Court
3580 Wilshire Blvd., Room 213
Los Angeles, CA 90010

REED & REED
JOHN W. REED
7610 Girard Ave., Suite 200
La Jolla, CA 92037

Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at San Diego, California, on the 10th day of December, 1985.

There is a delivery service by United States Mail at each

place so addressed or regular communication by United States mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California December 10, 1985.

Dotty Michael

Dotty Michael

Subscribed and sworn to before me this 10th day of December, 1985.

Barbara L. Cox

Notary Public in and for said County and State

OFFICIAL SEAL
BARBARA L. COX
NOTARY PUBLIC - CALIFORNIA
Principal Office, San Diego County
My Commission Expires May 4, 1986

(seal)